

ITG News
Keeping First Nations Informed

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Message from the Director

The recent Consultation Listening meeting held in February in Arlington, Virginia included a discussion on whether the Internal Revenue Service uses “cookies” to track access to www.irs.gov, the web site we use to provide all customers with ready access to federal tax information. While we reassured the attendees that there is no tracking of access and even posted a link at the bottom of the ITG landing page, the discussion made me realize that we should clearly articulate our overall concern for the privacy of Tribal tax information.

The Internal Revenue Code contains significant limitations on the accessibility of tax information. Quite simply, tax information is protected as some of the most confidential data that the federal government maintains. The IRS is prohibited from sharing information with very narrowly defined exceptions. Those exceptions generally cover court ordered releases, limited information sharing with other taxation agencies, and releases of information to Congress under federal statutes that require such information to be provided in order to enhance tax compliance.

The statutes impose severe penalties on any IRS official who releases information to a third party, whether orally or in writing, beyond those situations where it is a legal requirement, or necessitated to obtain necessary information for tax administration requirements. Such a situation might include sharing information with IRS Counsel where necessary to obtain legal advice on

a Tribal issue.

Independent of the legal requirements that protect your tax information, I want to state my firm commitment to protecting the privacy of any conversations that you may have with me or my staff. For example, those who have attended the Consultation Listening meetings held to date are aware that we do not collect names of attendees unless they wish to provide them. Where Tribes have requested one-on-one meetings to discuss individual matters, we have scheduled them in a private area and have maintained those conversations as confidential.

We will continue to respect the requirements of federal law as well as respect your rights as a sovereign entity. Your information and our discussions will not be shared with anyone except those with a “need to know.”

As always, I am available to discuss any concerns you may have by calling me at (202) 283-9736.

Christie Jacobs

New Rules Outlined for ITIN Acceptance Agents

The Internal Revenue Service has announced new rules for individuals who participate in the Individual Taxpayer Identification Number (ITIN) Acceptance Agent program.

An Acceptance Agent is an individual, business or organization (college, financial institution, accounting firm, etc.) authorized by IRS to assist individuals in obtaining ITINs. Acceptance Agents review applicants' documentation, complete a certificate of accuracy, and forward the certificate and application to the IRS for processing.

The ITIN is for taxpayers who do not qualify for a Social Security Number but who still need the nine-digit identification number used by the IRS to process a Form 1040 and other tax schedules.

Revenue Procedure 2006-10 outlines the new rules and instructions for Acceptance Agents. The four major changes are:

- Acceptance Agent applicants are required to submit to suitability checks.
- Existing Acceptance Agent agreements will expire on December 31, 2006. Acceptance Agents must reapply to retain their approved status.

- Acceptance Agent agreements must be renewed every fourth year.
- Acceptance Agents may request their names be added to a publicly available list that will be published by the IRS.

These changes are part of an on-going IRS effort to ensure that ITINs are used strictly for tax administration purposes. In recent years, the IRS has made a number of revisions to the ITIN program such as requiring the ITIN application be accompanied by a completed tax form and streamlining the number of identification documents that Acceptance Agents can use to confirm the ITIN applicant's identity.

Reporting Abuses/Schemes

We continue to work with tribes and tribal officials to address financial abuses and schemes being promoted in Indian country. Working together can help ensure the integrity of tribal finances, and eliminate the threats posed by individuals with schemes that appear "too good to be true" and often are.

If you are aware of financial impropriety or of a promoter advocating a scheme that appears highly suspect, you can contact the ITG Abuse Detection and Prevention Team at (716) 686-4860 or via e-mail at tege.itg.schemes@irs.gov.

Employee Tip Income Program Questions

ITG has a full-time Tip Coordinator to assist you with any questions about tip reporting agreements. If you are interested in securing a Tip Agreement, have questions concerning your existing agreement, or have received a notice about tip reporting responsibilities that is unclear, please contact Julie Reese at (303) 231-5250, ext. 236.

Common Compliance Problems Identified through Compliance Checks

Compliance Checks remain a valuable tool to assess the areas where tribes may have federal tax responsibilities and to help mitigate potential problems. Our January 2006 issue introduced TEFAC, Tribal Evaluation of Filing and Accuracy Compliance, which was designed to allow qualifying tribes to conduct their own self- Compliance Check. Information on the entire Compliance Check process, as well as useful references on common tribal tax issues, can be accessed on our web landing page by clicking on "Enhancing Federal Tax Compliance".

The following list shows the "Top 10" items that are surfacing via Compliance

Checks, and may be useful to you in assessing your own situation. If you believe you may have any of the issues outlined below, you may wish to apply to conduct a self Compliance Check through our TEFAC program, the process for which is also outlined on our web site.

“The Top 10”

1. Federal Unemployment Tax Act (FUTA) – Tribes still making tax deposits and/or filing Forms 940, Annual Federal Unemployment Tax Return, when they are not required to pay FUTA because they participate in State unemployment. (For further information on FUTA requirements and exclusions refer to Chapter 15 of the Employment Tax Desk Guide Publication 4268 located on the Employment Tax link at www.irs.gov/tribes.)

2. Noncompliance with Revenue Ruling 59-354 - Tribal council members' pay being handled incorrectly and reported on a Form 1099 instead of a Form W-2 or being reported on a Form W-2 with Social Security, Medicare, and income tax withheld. (Revenue Ruling 59-354 is located on the Employment Tax link at www.irs.gov/tribes. For further information on the correct treatment of tribal council pay refer to Chapter 3 of the Employment Tax Desk Guide Publication 4268 located on the Employment Tax link at www.irs.gov/tribes.)

3. Form 1099-MISC Miscellaneous Income Problems :

- the forms were not prepared at all
- the forms were prepared incorrectly (amounts in the wrong box, etc.)
- the forms were prepared but not submitted to IRS
- the incorrect copy was submitted to IRS
- not aware of the exception to filing on payments to corporations
- not aware of requirement to file 1099 for medical and legal expenses, even if the recipient is incorporated

(For further information on filing requirements on Forms 1099-MISC refer to the Instructions for Form 1099-MISC located on the link for More Forms and Publications at www.irs.gov.)

4. Employment Tax Return Filing/Deposit Problems -

- tax returns filed but no tax deposits were made
- deposits were made but no return was filed
- deposits were made to incorrect period
- deposits were made using the wrong timetable (e.g. monthly deposits when should be semiweekly)
- unaware of the "next day" deposit rule
- Form 941 was filed with no Schedule B attached

(For information on deposit and filing requirements refer to Circular E, Employers Tax Guide, Publication 15 located on the link for More Forms and Publications at www.irs.gov.)

5. Forms W-9, Request for Taxpayer Identification Number and Certification, and W-4, Employee's Withholding Allowance Certificate_- Forms are not being used or are not being updated when necessary. (For further information on requirements for Forms W-9 and W-4 refer to the forms with instructions located

on the link for More Forms and Publications at www.irs.gov.)

6. Backup Withholding Requirements - Unaware of requirement to backup withhold if no Taxpayer Identification Number (TIN) is provided prior to payment. (For further information on backup withholding requirements use the link Information Reporting at www.irs.gov/tribes and use the keyword “backup” as a search at www.irs.gov. Additional information is available in Publication 1281, Backup Withholding for Missing and Incorrect Name/TINs.)

7. Unreported Payments to Tribal Members - Payments to tribal members (committee members, gaming and non-gaming per capitas) not reported on information returns, reported on the wrong information return, required withholding not done, or withholding done incorrectly. (For further information on various payments to tribal members refer to www.irs.gov/tribes.)

8. Failure to Reconcile Year End Data - Amounts on Forms W-2, Wage and Tax Statement, W-3, Transmittal of Wage and Tax Statements, and 941, Employer's Quarterly Federal Tax Returns, do not reconcile. Amounts on Forms 1099 and 1096, Annual Summary and Transmittal of U.S. Information Returns, do not reconcile. (For further information on year end reconciliation refer to page 25 in Circular E, Employer's Tax Guide, Publication 15, located on the link for More Forms and Publications at www.irs.gov and/or refer to the January 2006 edition of the Southwest ITG Newsletter available at www.irs.gov/tribes.)

9. Incorrect Filing Requirements - Incorrect filing requirements for the entity or other tribal entities that were not identified to the IRS as belonging to the tribe. (Contact your ITG Specialist if there are concerns about incorrect filing requirements or the proper identification of a tribal entity on IRS records.)

10. Filing Information Returns Electronically (FIRE) & Magnetic Media Filing Requirements - Unaware of magnetic media filing requirements and unaware of FIRE system. (For further information on the FIRE system, refer to Publication 3609, Filing Information Returns Electronically, using the keyword “FIRE” at www.irs.gov. For information on magnetic media filing, use the key words “magnetic media” at www.irs.gov.)

Addressing Your Feedback

Many tribes have taken the time to tell us how we can better serve their federal tax administration needs. Participation by Tribes in the annual ITG Customer Satisfaction Survey, Consultation Listening meetings, and direct contacts, has enabled us to identify areas where we can improve the products and services that we provide for tribes, while still maintaining those that are valued as they currently exist.

Below are some changes that are currently being implemented as a result of your feedback and other changes will soon follow:

-As new federal tax developments surface, we will be using our tribal e-mail distribution list to send information directly to you in a more timely manner.

- The headline area of our web site landing page will now focus on “Recent Developments”, and will provide a direct link to recent court cases, new IRS Counsel rulings and opinions, updated ITG web site postings, new ITG products, and newly enacted federal tax legislation that could impact tribes.
- We will be creating a “Helpful Hints to Avoid Penalties” guide to post on the ITG web site, with a blast e-mail distribution showing a link to that new guide.
- With your assistance, we will undertake a structured canvass to identify issues that are unique to your Tribe.
- At a minimum, we will notify tribes annually of the name and telephone number of their assigned ITG Specialist.

ITG is committed to meeting your needs as they are identified. We want to encourage your participation in the annual IRS Satisfaction Survey that will be mailed to you in late-summer 2006, since that survey is the primary mechanism to assist us in determining areas for improvement.

Independent Contractor or Employee???

As Indian Tribal Governments conducts an increasing number of examinations of tribal entities, the correct classification of workers becomes an issue in many of these examinations. The determination of a worker as an independent contractor or employee affects reporting requirements, payment requirements, and the eligibility of the workers for benefits. If a worker has been treated as an independent contractor and the worker is reclassified as an employee during the exam, the entity would generally be liable for federal income tax withholding and FICA taxes computed using reduced rates under IRC §3509.

For example, the assessment on additional reportable payments of \$100,000 to employees, not properly included in wages for 2004, would result in an assessment of \$40,300 using the standard rates of 25% for federal income tax withholding (FITW) and 5.3% for FICA taxes.

For reclassified workers paid \$100,000 as independent contractors in 2004, the assessment would be \$13,710 if Forms 1099 were not filed timely. This computation is based on rates under IRC §3509(b) of 3% for FITW and 10.71% for FICA taxes. Lower rates of 1.5% for FITW and 9.18% for FICA would apply under §3509(a) if Forms 1099 were filed timely.

The courts have considered many facts in deciding whether a worker is an independent contractor or an employee. These relevant facts fall into three main categories: behavioral control, financial control, and the relationship of the parties. In each case it is important to consider all facts since no single fact provides a basis for a determination. Some of the factors for each of the categories are listed below.

-Behavioral Control

Instructions - Extensive instructions on how work is to be done suggests a worker may be an employee. For example, these instructions may include how, when, or where to do the work; what tools or equipment to use; where to purchase supplies and services.

Training - If the business provides the worker with training on required procedures and methods, the worker may be an employee.

Financial Control

Significant Investment - If the worker has a significant investment in the business the worker may be an independent contractor.

Expenses - If the worker is reimbursed for business expense, the worker may be an employee.

Opportunity for Profit or Loss - If the worker may realize a profit or incur a loss, the worker may be an independent contractor.

Relationship of the Parties

Employee Benefits - If the worker receives employee benefits, such as sick leave, vacation, medical coverage, etc., the worker may be an employee.

Written Contracts - A written contract may clarify the intent and relationship of both parties. The contents of the contract, in conjunction with all known facts, may assist in determining the status of the worker.

Additional information on worker classification may be found in Publications 4268, Employment Tax Guide for Tribes; 15, Employer's Tax Guide; 15-A, Employer's Supplemental Tax Guide; 1779, Independent Contractor or Employee...; and 1976, Independent Contractor or Employee? The business, or worker, may also file a Form SS-8 for Determination of Worker Status.

Publication 4268—Employment Tax Guide for Tribes

Our on-line Employment Tax Guide continues to receive a very positive response from tribal payroll and finance employees. You can download this comprehensive guide from a link on our landing page at www.irs.gov/tribes.

Southwest Indian Tribal Governments Specialists

The Southwest Group is dedicated to providing quality service to our customers. If you have any suggestions for improvements, concerns, or innovative ideas, please e-mail Steve Bowers at Steve.D.Bowers@irs.gov. We appreciate and welcome your input.

The Southwest ITG Specialists are listed below with their assigned tribes and pueblos. If you have a question and your assigned Specialist is not available,

please contact Steve Bowers, Southwest Group Manager, at (714) 347-9430 or e-mail him at Steve.D.Bowers@irs.gov.

Aaron Coleman
Aaron.H.Coleman@irs.gov
(602) 207-8751

Arizona: Ak-Chin Community, Ft. McDowell
Yavapai Nation, Havasupai Tribe, Kaibib-
Paiute Tribe, Yavapai-Apache Nation,
Yavapai-Prescott Indian Tribe
Utah: Paiute Indian Tribe of Utah

Theresa Nosie
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Arizona: Navajo Nation, White Mountain
Apache Tribe
Utah: Skull Valley Band of Goshutes

Suzanne Perry
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Arizona: Ft. Mojave Indian Tribe, Hualapai
Tribe, Hopi Tribe, Salt River Pima-Maricopa
Indian Community, Tonto Apache Tribe
Utah: Ute Indian Tribe of Utah

Michelle Risk
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Arizona: Cocopah Indian Tribe, Colorado
River Indian Tribes, Ft. Yuma-Quechan
Indian Tribe, Gila River Indian Community,
Pascua Yaqui Tribe of Arizona, San Carlos
Apache Tribe, Tohono O'odham Nation

Anita Gentry
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New Mexico: Isleta Pueblo, Jicarilla Apache
Tribe, Laguna Pueblo, Mescalero Apache, San
Felipe Pueblo, Sandia Pueblo, Santa Ana
Pueblo, Zuni Pueblo

Lonnette Graham
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New Mexico: Acoma Pueblo, Jemez Pueblo,
Picuris Pueblo, San Juan Pueblo, Santa Clara
Pueblo, Santo Domingo Pueblo, Tesuque
Pueblo, Zia Pueblo

Catherine St. Gregory
Catherine.M.StGregory@irs.gov
(505) 986-5260 x 243

New Mexico: Cochiti Pueblo, Nambe Pueblo,
Pojoaque Pueblo, San Ildefonso Pueblo, Taos
Pueblo
Colorado: Southern Ute Tribe, Ute Mountain
Ute Tribe
Texas: Ysleta Del Sur Pueblo

To add your name or e-mail address to our mailing list, please contact us via e-mail at: Suzanne.V.Perry@irs.gov or call Suzanne Perry at (602) 207-8254.

Account or Tax Questions?

Call Customer Account Services at 1-877-829-5500 or contact your assigned ITG Specialist.

Federal Tax Calendar for Second Quarter 2006

April 2006

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|---------------------|--|
| Wednesday, April 5 | - * make a deposit for 3/29-3/31 |
| Friday, April 7 | - * make a deposit for 4/1-4/4 |
| Monday, April 10 | - employees report March tip income to employers if \$20 or more |
| Wednesday, April 12 | - * make a deposit for 4/5-4/7 |
| Friday, April 14 | - * make a deposit for 4/8-4/11 |
| Monday, April 17 | - **make a deposit for March if under the monthly Deposit Rule |
| Wednesday, April 19 | - *make a deposit for 4/12-4/14 |
| Friday, April 21 | - *make a deposit for 4/15-4/18 |

May 2006

- | | |
|-------------------|--|
| Wednesday, May 3 | - *make a deposit for 4/26-4/28 |
| Friday, May 5 | - *make a deposit for 4/29-5/2 |
| Wednesday, May 10 | - *make a deposit for 5/3-5/5 |
| | - employees report April tip income to employers if \$20 or more |
| Friday, May 12 | - *make a deposit for 5/6-5/9 |
| Monday, May 15 | - **make a deposit for April if under the monthly deposit rule |
| Wednesday, May 17 | - *make a deposit for 5/10-5/12 |
| Friday, May 19 | - *make a deposit for 5/13-5/16 |
| Wednesday, May 24 | - *make a deposit for 5/17-5/19 |
| Friday, May 26 | - *make a deposit for 5/20-5/23 |

June 2006

- | | |
|--------------------|--|
| Thursday, June 1 | - *make a deposit for 5/24-5/26 |
| Friday, June 2 | - *make a deposit for 5/27-5/30 |
| Wednesday, June 7 | - *make a deposit for 5/31-6/2 |
| Friday, June 9 | - *make a deposit for 6/3-6/6 |
| Monday, June 12 | - employees report May tip income to employers if \$20 or more |
| Wednesday, June 14 | - *make a deposit for 6/7-6/9 |
| Thursday, June 15 | - **make a deposit for May if under the monthly deposit rule |

